

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3   KEVIN RICHARDSON,

Case No.: 3:20-cv-00710-MMD-WGC

4           Plaintiff

**Order**

5   v.

6   UNITED STATES ATTORNEY, USA,

7           Defendant  
8

9           Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),  
10 housed at Northern Nevada Correctional Center (NNCC). On December 21, 2020, he filed what  
11 he titled a "criminal complaint." The complaint was not accompanied by an application to  
12 proceed *in forma pauperis* (IFP) or the \$402 filing fee (consisting of the \$350 filing fee and \$52  
13 administrative fee).

14           The Local Rules of Practice for the District of Nevada provide: "Any person who is  
15 unable to prepay the fees in a civil case may apply to the court for authority to proceed *in forma*  
16 *pauperis* (IFP). The application must be made on the form provided by the court and must  
17 include a financial affidavit disclosing the applicant's income, assets, and liabilities." LSR 1-1.

18           When a prisoner seeks to proceed without prepaying the filing fee, in addition to filing  
19 the affidavit, the prisoner is required to submit a certified copy of the trust fund account  
20 statement (or institutional equivalent) for the six-month period immediately preceding the filing  
21 of the complaint. The statement must be obtained from the appropriate official at the prison or  
22 detention facility where the prisoner is or was confined. 28 U.S.C. § 1915(a)(2).  
23

1 When a prisoner brings an action IFP, the prisoner is still required to pay the full amount  
2 of the filing fee. The court is required to assess, and when funds exist, collect an initial partial  
3 payment of 20 percent of the greater of: (A) the average monthly deposits in the prisoner's  
4 account or (B) the average monthly balance in the prisoner's account for the six-month period  
5 immediately preceding the filing of the complaint. Thereafter, whenever the prisoner's account  
6 exceeds \$10, the prisoner must make monthly payments of 20 percent of the preceding month's  
7 income credited to the prisoners account until the filing fees are paid. The funds are to be  
8 forwarded by the agency having custody of the prisoner. 28 U.S.C. § 1915(b)(1), (2).

9 The filing fee is \$402, consisting of the \$350 filing fee and a \$52 administrative fee. If an  
10 inmate does not qualify for IFP status, he must pay the full \$402 filing fee. If the inmate  
11 qualifies for IFP status, the \$52 administrative fee is waived, and the inmate will only pay the  
12 \$350 filing fee over time.

13 Once Plaintiff has filed his completed IFP application and financial certificate or paid the  
14 filing fee, the court will screen the complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) or 28 U.S.C.  
15 § 1915A, or both. Both require dismissal of a complaint, or any portion thereof, that is frivolous  
16 or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief  
17 against a defendant who is immune from such relief. If the complaint is dismissed on screening,  
18 there will be no refund of the filing fee, and an inmate proceeding IFP is still required to pay the  
19 \$350 filing fee over time.

20 The court notes that Plaintiff has titled his action as a "criminal complaint"; however, an  
21 individual may not institute a private criminal proceeding in federal court. Criminal proceedings  
22 are initiated by the government, usually through the United States Attorney's Office. Under the  
23 Fifth Amendment, except in certain military cases, no person shall be held to answer for a crime

1 unless it is on presentment or indictment of a grand jury, and discretion whether to bring charges  
2 lies with the appropriate federal or state prosecuting authority.

3 Even if the court construed this as a civil complaint, as it stands, it is nonsensical and  
4 frivolous.

5 In an abundance of caution, the court will allow Plaintiff 30 days to attempt to file an  
6 amended civil complaint (**IF** he files a completed IFP application or pays the \$402 filing fee).

7 Plaintiff is cautioned that even if this action is dismissed, he will still be required to pay  
8 the filing fee (\$350 if granted IFP status, or \$402 if not granted IFP status).

9 **CONCLUSION**


10 The Clerk shall **SEND** Plaintiff a copy of the instructions and application to proceed IFP  
11 for an inmate as well as the form civil rights complaint for an inmate. Plaintiff has **30 days** from  
12 the date of this Order to either file his completed IFP application and financial certificate or pay  
13 the full \$402 filing fee, and file an amended civil complaint, **OR** advise the court that he does not  
14 intend to proceed further with this action.

15 If Plaintiff fails to timely comply with this Order, his action may be dismissed.

16 In addition, Plaintiff's other pending motions (ECF Nos. 5, 6, 7, 9, and 10) are **DENIED**  
17 without prejudice.<sup>1</sup>

18 **IT IS SO ORDERED.**

19 Dated: March 23, 2021

20   
21 William G. Cobb  
22 United States Magistrate Judge

23 <sup>1</sup> The court notes that Plaintiff filed a notice of appeal (ECF No. 12); however, the appeal was dismissed for lack of jurisdiction (ECF No. 21).